

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**APL No. 242 OF 2020 & IA No. 1727 OF 2020,
APL No. 243 OF 2020 & IA No. 1750 OF 2020 & IA No. 920 OF 2021
and
APL No. 244 OF 2020 & IA No. 1752 OF 2020 & IA No. 902 OF 2021**

Dated: 3rd December, 2021

**Present: Hon'ble Mr. Justice R.K. Gauba, Judicial Member
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

APL No. 242 OF 2020 & IA No. 1727 OF 2020

- 1. Rajasthan Textile Mills Association, B-1
Nawalkha Apartments, Bharat Mata Path,
Jamnalal Bajaj Marg, 'C' Scheme, Jaipur-
302001 (Raj.)
through its Secretary Appellant No.1**
 - 2. Maharaja Shree Umaid Mills Ltd., Jodhpur
Road, Pali-306401 (Raj.)
through its President Appellant No.2**
 - 3. Rajasthan Textile Mills, Pachpahar Road,
Bhawani Mandi-326502 (Raj.)
through its Executive President Appellant No.3**
 - 4. RSWM Ltd., Mordi, Distt.
Banswara-327001 (Raj.)
through its Chief Operating Officer Appellant No.4**
- Versus**
- 1. Jaipur Vidyut Vitran Nigam Limited (JVVNL),
Vidyut Bhawan, Janpath, Jaipur-302005
(Raj.)
through its Managing Director. Respondent No.1**
 - 2. Ajmer Vidyut Vitran Nigam Limited (AVVNL),
Vidyut Bhawan, Panchshel Nagar, Makarwali**

3. Road, Ajmer-305004 (Raj.) through its Managing Director. Respondent No.2
3. Jodhpur Vidyut Vitran Nigam Limited (JdVVNL), New Power House, industrial area, Jodhpur-342003 (Raj.) through its Managing Director Respondent No.3
4. Rajasthan Electricity Regulatory Commission, "Vidyut Vinyamak Bhawan", Near State Motor Garage, Sahakar Marg, Jaipur-302005 (Raj.) through its Secretary. Respondent No.4

Counsel on record for the Appellant(s): Mr. P.N. Bhandari
Mr. Paramhans Sahani

Counsel on record for the Respondent(s): Mr. Sandeep Pathak
Ms. Archana Pathak Dave For Res1

APL No. 243 OF 2020 & IA No. 1750 OF 2020 & IA No. 920 OF 2021

1. M/s. Mangalam Cement Ltd., P.O. Aditya Nagar-326520 Morak, Distt. Kota (Raj.) through its Sr. General Manager (Accounts),
..... Appellant (s)

Versus

1. Jaipur Vidyut Vitran Nigam Limited (JVVNL), Vidyut Bhawan, Janpath, Jaipur-302005 (Raj.) through its Managing Director. Respondent No.1
2. Rajasthan Electricity Regulatory Commission, "Vidyut Vinyamak Bhawan", Near State Motor Garage, Sahakar Marg, Jaipur-302005 (Raj.) through its Secretary. Respondent No.2

**Counsel on record for the Appellant(s): Mr. P.N. Bhandari
Mr. Paramhans Sahani**

**Counsel on record for the Respondent(s): Mr. Sandeep Pathak
Ms. Archana Pathak Dave For
Res1**

**APL No. 244 OF 2020 & IA No. 1752 OF 2020 &
IA No. 902 OF 2021**

**M/s. BLS Ecotech Ltd., SP-179, RIICO
Industrial Area, Kaharani, Bhiwadi-301019
(Raj.) through its Director**

.... Appellant (s)

Versus

**1. Jaipur Vidyut Vitran Nigam Limited (JVVNL),
Vidyut Bhawan, Janpath, Jaipur-302005
(Raj.)
through its Managing Director.**

.... Respondent No.1

**2. Rajasthan Electricity Regulatory
Commission, "Vidyut Vinyamak Bhawan",
Near State Motor Garage, Sahakar Marg,
Jaipur-302005 (Raj.) through its Secretary.**

.... Respondent No.2

**Counsel on record for the Appellant(s): Mr. P.N. Bhandari
Mr. Paramhans Sahani**

**Counsel on record for the Respondent(s): Mr. Sandeep Pathak
Ms. Archana Pathak Dave for
Res1**

JUDGMENT (ORAL)

Per Hon'ble Mr. Justice R.K. Gauba, Judicial Member:

1. These matters have been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.

2. These three appeals are directed against the common order dated 28.10.2020 passed by Rajasthan Electricity Regulatory Commission (hereinafter, "RERC" or "the State Commission") in Petition Nos. RERC-1735, 1754, 1755, 1758, 1759, 1769, 1782, 1791, 1794, 1795, 1797 & 1798/2020 which had been instituted by the appellants herein, invoking the jurisdiction of the State Commission under Section 86(1)(f) read with Sections 142 and 146 of the Electricity Act, 2003.

3. The sum and substance of the prayer made before the Commission was that on account of the pandemic conditions due to spread of Corona Virus in the country from March 2020 onwards, and consequent lockdown imposed by governmental authorities invoking the provisions of Disaster Management Act, the industrial activity having come to a halt, the appellants - large industrial consumers taking supply of electricity from the Respondent Distribution Licensee (*the first Respondent*) - were prevented from using the supply and, therefore, should have been exempted from the levy of fixed charges in the periodical billing. The Commission, while appreciating the background facts, has not granted any relief to the appellants observing that the *Terms and Conditions of Supply* ("TCOS") which apply to the contracts between each appellant, on one hand, and the Distribution Licensee, on the other, should be strictly followed, mentioning in this respect the existence of grievance redressal mechanism under the law, to be specific the Forum created by Section 42(5) of the Electricity Act, 2003.

4. The appellants are before us by these appeals submitting that there is a right conferred by Clause 45(4) of TCOS in terms of which they

having been prevented from using the supply of electricity due to lockdown of industrial activity, the Commission should have granted the relief as prayed for. They also refer to Section 56 of the Contract Act on the issue of impossibility of performance and the doctrine of *force majeure*. Reliance is placed, *inter alia*, on decisions of this Tribunal rendered on 30.01.2014 in Appeal No. 226 of 2014 and dated 04.04.2012 in Appeal No. 149 of 2010.

5. With the consent of learned counsel on both sides, we have taken up these appeals for final hearing at this stage. We have heard them at length.
6. The background facts have been noted by the State Commission in paras 6.4, 6.5 and 6.12 of the impugned order, endorsing the hardship mentioned herein with observations in para 17, which may be quoted verbatim as under:

“6.4 The Lockdown due to COVID 19 was imposed by the Government of India under the Disaster Management Act, 2005 by its order dated 24.03.2020 directing all Commercial and Industrial Establishments to remain closed for a period of 21 days (which was extended subsequently from time to time). Prior to this, the Government of Rajasthan had also issued similar lockdown directions on 22.03.2020 vide order No. F.33(2)Home/Gr.9/2019.

6.5 Consequent to the restrictions imposed by the Central/ State Government the Petitioners had no option but to totally shut down their plants, causing heavy losses to the Petitioners, dislocation of entire industrial activity apart from the extreme hardship to the workers. The events were well beyond the control of the Petitioners and have led to the impossibility of the contracts, temporarily during the Lockdown period. The Petitioners had also made representation to the Principal

Secretary, Energy GOR, Chairman Discoms and Managing Directors of respective Discoms.

....”

“6.12 Under the current Lockdown conditions all Industrial Consumers have been restricted use of electricity Supply due to Lockdown Orders of Central Government/State Government and/or District Magistrates. Therefore it has become impossible for the industrial consumers to draw any electricity from the Discoms. Hence Fixed Charges for the relevant period are not leviable under the above provisions and the Commission may kindly declare accordingly.

....

“17. The circumstances due to COVID-19 were unforeseen and unprecedented, which required the Commission to act for balancing the interest of consumers and utilities. Each constituent of the Power Sector has been affected by the Lock-down. The Commission therefore took the measures to mitigate hardships to the consumers and the utilities in public interest. The prime function of the Commission is to protect the interest of the consumer and at the same time ensuring recovery of cost by utilities.”

7. Clause 45(4) of TCOS is at the heart of the claim agitated by the appellants. It reads thus:

“ ... the large industrial consumer at any time, is prevented from receiving or using the electrical energy to be supplied under this agreement in whole, owing to any strike, lawful lockouts, riots, insurrections, command of a civil or military authority, fire, explosions or Act of God, then the consumer shall not be liable to pay minimum billing amount for the period of the event(s) mentioned above, provided the consumer notifies the Asstt. Engineer concerned and billing authority within three days in writing of the occurrence of any event as noted above with necessary details to prove that the occurrence is preventing/has prevented the consumer from receiving or using the amount of power for industrial purpose...”

8. Though on the basis of submissions of the Respondents, the Commission has also noted in the impugned order the facts relating to orders dated 15.04.2020 and 01.06.2020 which were passed earlier in terms of which the collection of such charges as in question for a certain period was deferred till 30.06.2020, the relaxation granted by the State Commission in the *suo motu* proceedings drawn being in follow-up of the guidelines that had been issued by the governmental authorities so as “*to mitigate*” the suffering at the end of the consumers.
9. The State Commission has noted its responsibility to balance the interest of the consumers as well as the other stakeholders. Indeed, in terms of overall scheme of the Electricity Act, 2003 and particularly the provision contained in Section 61, it is the obligation of the Commission in the matter of framing tariff orders, and enforcing them, to safeguard not only the consumers’ interest but also recovery of the cost of electricity in a reasonable manner.
10. In our view, the judgments referred to above, as relied upon by the appellants, do not assist them in the challenge to the impugned decision in as much as they only lay down the principle that the regulatory Commission under the Electricity Act has the unhindered power to secure compliance with the provisions of law and regulations. The provision contained in Section 86(1)(f), which was invoked, essentially pertains to the power of the Commission to “*adjudicate upon the dispute between the licensee and generating companies*”. Ordinarily, the issue of billing of a consumer will not be covered under the said adjudicatory jurisdiction. In fact, the Hon’ble Supreme Court in *MERC Vs Reliance* 2007 (8) SCC 381 has clearly

ruled that there can be no general directions issued by the regulatory Commission under the Electricity Act in billing disputes. In such cases, the Hon'ble Supreme Court has held, the matter should be referred to the Consumer Grievance Redressal Forum, the authority created by Section 42(5).

11. We are conscious that by sub-section (8) of Section 42, it is clarified by the statute that the Forum for redressal of grievances of consumers is provided "*without prejudice to right that the consumer may have*" otherwise. But, in a dispute of the kind that is raised by the Appellant herein, there cannot be a general order. The case of each consumer will have to be examined to ascertain as to whether it was actually prevented from using the supply of electricity which was available from the distribution licensee within the meaning of Clause 45(4) of TCOS quoted above. To put it simply, claims of each consumer will have to be decided on case-to-case basis dependent on the proof of inability to use supply presented by them and compliance with the procedure prescribed in that provision.
12. In above facts and circumstance, the present matter is not one where a policy decision can be taken by the electricity regulatory Commission, or enforced, un-exceptionally across the board to consumers of a particular category.
13. In the foregoing facts and circumstances, we find no substance in the appeals. The appellants are at liberty to avail of the remedy before the Consumer Grievance Redressal Forum. We are not impressed with the plea that the said forum cannot be trusted since it is created by the distribution licensee. It may be pointed out that the decision of

the forum is not final given the fact that Section 42(6) provides a remedy before Ombudsman against such decision. The Grievance Redressal Forum is an independent entity created by law to entertain representation against the decision of the Forum, the decisions of such authorities also being subject to remedies under the law.

14. We do not find any error or infirmity in the impugned decision. The appeals are, therefore, dismissed. The pending applications are rendered infructuous and disposed of accordingly.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO
CONFERRING ON THIS 3rd DAY OF DECEMBER, 2021.**

(Sandesh Kumar Sharma)
Technical Member

(Justice R.K. Gauba)
Judicial Member

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